



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,429	02/17/2004	Lawrence Germano Ponsi	920229-902699	1562

23644 7590 09/26/2006
BARNES & THORNBURG LLP
P.O. BOX 2786
CHICAGO, IL 60690-2786

EXAMINER

SHAPIRO, JEFFERY A

ART UNIT PAPER NUMBER

3653

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,429

Applicant(s)

PONS ET AL.

Examiner

Jeffrey A. Shapiro

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 depends from Claim 1, but recites a preamble that states "the product warming system..." Claim 1 has a preamble that seems to indicate that a "product storing and dispensing system" is claimed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 9 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dearing et al (US 2002/0183882).

As recited in Claim 1, Dearing discloses a cabinet (230) having plural compartments (see figure 6), a sensor for each product compartment (262-267), as shown in figures 6 and 10 and a processor (256) connected to each sensor.

Art Unit: 3653

Dearing further discloses an aging indicator, at paragraph 57, which indicates an expiration message is sent to the micro-warehouse (MW 36) system (25), which is a controller/server. See paragraph 40. Multiple signals are transmitted concerning the condition of the items located in the MW, which can be a freezer, refrigerator, or other storage device. Each of the processors can monitor the status of each item concerning data such as temperature.

Note that it is inherent that Dearing has a temperature controller.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing. Dearing describes the product storing and dispensing system described above. Dearing does not expressly disclose that the processors are optical or infrared based. However, Dearing does teach the use of various sensors, such as proximity sensor (40) or light curtains. Optical and infrared detectors are considered to be functional equivalents of each other that one ordinarily skilled in the art would have found obvious to use to sense the presence of a product in a compartment. Also, Dearing at paragraph 5, lines 7-10 describes use of RF tags having a frequency between the audible and infrared range. Therefore, it would have been obvious to use

sensors based on any particular radiation-optical, radio, or infrared as functional equivalents of each other.

8. Claims 4-6, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Bastian, II et al (US 6,650,225 B2). Dearing discloses the system described above. Dearing does not expressly disclose, but Bastian discloses a display (101), illustrated at figure 7, located at each product compartment/bay.

Regarding Claim 14, note that Bastian teaches using various visual indicators, for example, in figure 7.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display at each compartment/bay of Dearing's microwarehouse.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract, for example.

Regarding Claim 15, note that it is considered to be expedient for one ordinarily skilled in the art to have three separate displays to display separate information such as "not ready", "ready" and "select first" indicators. Bastian provides teaching, as cited above, concerning the use of several indicators and displays to communicate several pieces of information about the bay they are associated with.

9. Claims 7-9, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Chen (US 6,930,296 B2). Dearing discloses the

system described above. Dearing does not expressly disclose, but Chen discloses heating means (30) for heating items.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display at each compartment/bay of Dearing's microwarehouse.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract, for example.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Black, Sr. et al (US 5,522,310). Dearing discloses the system described above. Dearing does not expressly disclose, but Black discloses a thermocouple (20) for determining temperature in a freezer. Said thermocouple is also taught as being used to gather data to determine product spoilage. See col. 5, lines 46-65 and col. 12, lines 60-64.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used a thermocouple to detect temperature in a product bay of Dearing's product storage area, since Dearing discusses use of a temperature sensor at paragraph 40, line 6, and a thermocouple is just such a temperature sensor.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Teicher '162 is cited as another example of a product storage area.

Art Unit: 3653

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS 

September 18, 2006


PATRICK MACKEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600